

History of Women's Rights Movement and Pro-Women Legislation in Different Ruling Regimes of Pakistan

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Abstract

This paper outlines the history relevant to the recognition of violence against women (VAW) in Pakistan. It details timelines, important milestones, and organizations involved in the women's rights movement in Pakistan. In this paper the major ruling regimes that impacted the women's rights movement before and after Pakistan Independence in 1947 are outlined.

Keywords: Women's right movement, different ruling regime of Pakistan, pro-women legislation.

Pre and Post Partition of Pakistan (Before and After 1947)

Pakistan's women's rights movement has its history in the colonial period under British rule on Indian sub-continent and in the political and economic context of the 19th century (Mumtaz & Shaheed, 1987). Under British rule western laws related to land, revenue, criminal cases, transfer of property and law of evidence were brought to the Indian sub-continent. The British enacted laws that would enhance their power and control in the region. No laws were introduced that dealt specifically with domestic life including: family relations, customary and religious laws, and the status of women (Mumtaz & Shaheed, 1987). The lack of right in property, in which land was generally transferred from father to his son, was a

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prominent problem for women as it ignored their rights (Coomaraswamy, 2005).

The colonial powers allocated most of the lands to powerful feudal landlords and tribal heads mostly in Punjab and Sindh provinces, who were loyal to British Government after 1857 war (Coomaraswamy, 2005). This perpetuated the feudal and tribal system in the region whose beneficiaries have been ruling Pakistan since independence and reinforced the subordinate role of women (Moghadan, 1992). Women, who had been ruled over by landlords and patriarchs, were considered a liability, as they did not have right of inheritance of their property. Also they were frequently used as property and were subjugated as a person having no liberty, freedom and voice in family matters (Moghadan, 1992).

In 1937, protests by Muslim women for their right of share in property resulted in the enactment of the Muslim Personal Law (Shariat¹). The Personal Law Application Act of 1937, which dealt with property matters of Muslim women, was also enacted in 1937. Although these laws granted some property rights to Muslim women, agricultural property was excluded (Mumtaz & Shaheed, 1987). Other important legislation included the Guardian and Wards Act of 1890, related to child custody, and the Dissolution of Muslim Marriage Act of 1939, which provided seven grounds to a woman to divorce her husband including addiction, adultery, giving her no money etc. was enacted. The Dissolution of Muslim Marriage Act was rarely effective as women were required to prove these allegations in court (Mumtaz & Shaheed, 1987).

Indian Muslim women participated in the independence movement with full zeal. The leader of the nation, Quaid e Azam Muhammad Ali Jinnah, noted in a 1944 speech “our women should not be kept within the four walls of the house rather they should be taken along in each and every sphere of our lives” (as cited in Khan & Hussain, 2008, p. 245). After the independence of Pakistan in 1947,

¹ *Shariat* means Islamic canonical laws based on the teachings of the Holy Koran and the traditions of the Prophet Muhammad (PBUH). These laws prescribe both religious and every day duties of a Muslim and also describe retributive penalties for the breaking of these laws. The *Sharait* laws are supplemented by legislation in Muslim countries that are adapted to the conditions of the day. Although the manner in which it should be applied in modern states is a subject of dispute between Islamic fundamentalists and modernists.

the Women's Voluntary Service (WVS) was established in 1948 and in 1949 the Pakistan Women's National Guard (PWNG), later named All Pakistan Women's Association (APWA), was founded by Begum Rana Liaqat Ali Khan. These organizations provided rehabilitation and settlement services for refugee women and girls. They also fought for women's political rights and paved the way for advocating women's rights nationally.

Several other organizations focused on women and children's health and women's political participation in the early period of Independence included: the Pakistan Red Cross, the Family Planning Association of Pakistan, the Girl's Guide Association, the Pakistan Child Welfare Council, the Pakistan's Nurse Federation, the Domestic Women Association and the Housewives Association (Mumtaz & Shaheed, 1987). Also during this time period, the YWCA provided hostel facilities to employed women and provided training for women in office administration and managerial skills. Also, the United Front for Women's Right advocated for women's rights and reforms in laws for women to find employment outside their homes as well as have legal support to ensure an adequate quality of life (Mumtaz & Shaheed, 1987). This time period marked the beginning of women's rights in Pakistan and led to gains in women's legal rights and economic independence. However, women were still unable to occupy political positions.

General Ayub Khan's Military Regime (1958 - 1969)

In 1958 General Ayub Khan imposed martial law. The military and bureaucrats of the state supported western ideologies which promoted women participation in the full social environment by engaging in professional and social life including supporting women's education and employment, specifically in teaching, medicine and journalism (Mumtaz & Shaheed, 1987). The imposition of martial law however, banned the United Front for Women's Right and its work on the advancements of women's legal rights (Mumtaz & Shaheed, 1987). Also in 1964, Ms. Fatima Jinnah, sister of Muhammad Ali Jinnah the founder of Pakistan, contested elections against Ayub Khan which paved the way for women to take part in public and political office (Mumtaz & Shaheed, 1987).

In order to become a recognized member of the international community, Pakistan modified its existing legislation regarding

women in line with the United Nations Conventions on Human Rights, adopting the Convention on the Consent to Marriage and Minimum Age for Marriage and Registration of Marriage in 1950 and the Convention on the Political Rights of Women in 1953 (Weiss, 2003).

Under the political leadership of Ayub Khan (from 1958 to 1969) the Muslim Family Laws was enacted in 1961 (Weiss, 2003). These laws deal with registration of all marriages, provided women's rights to and shares in her husband's property, provided restrictions against polygamy, required written permission from a wife if a husband wants a second marriage and other safeguards for women in case of divorce, such as the need to provide written divorce to the chairman of the local area council and to the wife instead of a merely a verbally divorce (Weiss, 2003). This latter condition helped women to prove that they had been divorced and that their former husband could not continue to exploit them (Weiss, 2003).

Several important organizations aimed at advancing women's rights were formed during this time period. Founded in 1967 the Behbood Association served as a social welfare organization aimed at developing economic skills for women to earn a livelihood and become economically independent and the Soroptomist Club organized seminars and documented papers for raising awareness on women's rights (Mumtaz & Shaheed, 1987). In 1969, the Anjuman Jamhooryat Pasand Khawateen also known as the Democratic Women Association was established in Karachi to support women laborers, including advocating for equal remuneration for equal work, hostel and transport facilities for working women and educational facilities for women in general (Mumtaz & Shaheed, 1987).

Zulfiqar Ali Bhutto's Democratic Regime (1970 - 1977)

The government of Zulfiqar Ali Bhutto, Pakistan People's Party (1970-1977) was characterized by a marked development in feminist awareness (Mumtaz & Shaheed, 1987). The Constitution of Pakistan, implemented in 1973, legislated fundamental rights banning discrimination, particularly in employment, on the basis of sex, caste, and religion (Mumtaz & Shaheed, 1987). As a result of this favourable atmosphere women held several important offices including: Begum Liaqat Ali Khan- first woman Governor of Sindh

province, Begum Kaneez Yousaf- Vice Chancellor of one of the premier university of Pakistan (Quaid-e-Azam University Islamabad) and posts were allocated for women in Foreign and District Management groups in Pakistan (Mumtaz & Shaheed, 1987).

Additional women's organizations established in this period included the Women's Front which worked for equal right of women in society and in the workplace, the Shirkat Gah established in 1975, and the Aurat Foundation formed in 1976-77, both of which advocated for women's rights through information and awareness and still play a prominent role in advancing women's rights in Pakistan (Mumtaz & Shaheed, 1987).

General Zia ul Haq's Military Regime (1977 - 1988)

Advances in the women's movement suffered during the period of martial law imposed by General Zia ul Haq from 1977 to 1988. General Zia ul Haq's regime revoked the constitution and propagated Islamization through Shariah Laws, which subjugated and oppressed women (Basu, 2005). The Hudood Ordinance dealt with rape, adultery and theft cases. It denied woman the right to testify and the Qanoon e Shahadat or Law of Evidence, enacted in 1984, stated that a woman's witness evidence was to be considered half as credible as a man's (Peter, 2005).

In response to these actions, the Women's Action Forum (WAF) was created. It advocated for women's rights, the reinstatement of the 1973 Constitution and the restoration of democracy in Pakistan (Engels, 1970). However, WAF faced strict censorships in media and was not allowed to gather in public demonstrations (Engels, 1970).

Due to international pressures, in 1979 the government established the Women's Division to improve the status of women and its successor was Ministry for Women Development. The United Nations Convention on Elimination of All Forms of Discrimination Against Women in 1981 made the state revise the discriminatory laws made during Zia's regime (Farida & Hussain, 2007). In 1990, Pakistan became a signatory on the UN Convention of the Rights of the Child and in 1993 signed the Vienna Declaration on Women's Rights as Human Rights (Farida & Hussain, 2007).

Benazir Bhutto's Democratic Regime (1988 - 1990 & 1993 - 1996)

Benazir Bhutto, daughter of Zulfiqar Ali Bhutto and member of the Pakistan's People's Party, was elected as first woman Prime Minister of Pakistan in 1988. She was also first elected woman Prime Minister of a Muslim country (Mustafa, 2007). It is noteworthy that even under her rule the discriminatory laws made during Zia's period could not be repealed as she faced acute criticism from the religious leaders (Mumtaz & Shaheed, 1987).

In 1994, Pakistan's Senate and Commission of Inquiry for Women prepared a report for the Beijing Conference, which outlined the grave situation faced by women in Pakistan, who were considered inferior under Islamic laws and customary practices and traditions (Weiss, 2003). This was the first time the state presented statistics on the situation of women in Pakistan to an international audience and was only possible as Pakistan had pledged to ratify the above noted conventions.

Nawaz Sharif's Democratic Regime (1990 - 1993 & 1997 - 1999)

In 1997, Nawaz Sharif of the Pakistan Muslim League, a political party that supported mostly the Islamic ideology became Prime Minister. Under his leadership, religious party criticism continued he was unable to repeal any of the discriminatory laws. Further, during this time period honour crimes dealt with under Hudood Ordinance were prevalent (Mumtaz & Shaheed, 1987).

No significance changes in the laws related to women were during leadership of Benazir or Nawaz as they were unable to garner support from the house and the general population as a consequence of Islamization and militancy of the Zia ul Haq's regime.

General Pervaiz Musharaf's Military Regime (1999 - 2008)

Martial law was again imposed in 1999 by General Pervaiz Musharaf. In 2000 he introduced the Local Government System, in which women were given 33% representation in local government and 17% of the seats were reserved for women in national and provincial assemblies (Weiss, 2012). This was the first time any South Asian country gave such a substantial representation to women of the country in political avenues (Weiss, 2012). The Musharraf government also fixed 5% of quota for women seats in government service (Hassan, 2006).

On the 2002 International Women Day, General Musharaff formed the National Commission for Women whose role was to

safeguard women's rights in the country (Weiss, 2012). The Musharraf government Other also enacted a pro-women laws, the Criminal Amendment Act of 2004, which amended Pakistan Penal Code²'s provisions for honour killings by authorizing the court judges to penalize the accused even if the legal heirs of the victim forgive him and also to restrain him from getting any share of inheritance from the deceased property as most of the times the accused are family members of the victims (Weiss, 2012). The Women Protection Act of 2006 modified the Hudood or Zina (Adultery) Ordinance that had been widely used in sexual offences against women by converting rape allegations into adultery and the complainant as the accused. The Women Protection Act upheld rape allegations and did not penalize victims. It also stated that if a person is accused of adultery he or she cannot be arrested directly by the police rather a complaint is to be filed in session court (Weiss, 2012).

Asif Ali Zardari's Democratic Regime (2008 – 2013)

Asif Ali Zardari, husband of the late Benazir Bhutto, and member of the Pakistan People's Party became Prime Minister in 2008. He supported many pro-women legislation including the Criminal (Amendment) Act of 2010 that criminalizes the offences of sexual harassment at workplace aiming to protect women at her workplace and promote women's independence (Weiss, 2012) and the Acid Control and Acid Crime Prevention Act of 2010 that increased punishments for acid crimes in the Pakistan Penal Code.

The Protection from Anti-Women Practices Act, enacted in 2011, penalizes anti-women practices like Swara marriages, that is marriages where women are traded in compensation of a murder, adultery, abduction and kidnapping committed by the men of the family, and also marriages to the Holy Quran, forced marriages and depriving women from inheritance rights.

Nawaz Sharif's Democratic Regime (2013 -)

Under the previous regime of Asif Ali Zardari in June 2011, the provinces were made autonomous by passing the 18th

² The Pakistan Penal Code usually called PPC or in Urdu as *Majmū'ah-yi ta'zīrāt-i-Pākistān* is a penal code for all offences charged in Pakistan. It was originally prepared by Lord Macaulay with a great consultation in 1860 on the behalf of the Government of India as the Indian Penal Code.

Constitutional Amendment. All public departments were under Federal Government before the Amendment but subsequently provinces were responsible for their own laws and the regulation of their public departments. The following section details provincial laws that were made for prevention of domestic violence and child marriages in Pakistan.

Legislation to Prevent Domestic Violence in Pakistan

The Sindh Provincial Assembly of Pakistan was the first to legislate for VAW by enacting, The 2013 Domestic Violence (Prevention and Protection) Act. This law included as the aggrieved persons not only woman, but children or any vulnerable person who lives with the perpetrator in the same house as a nuclear, joint or extended family. It also defined punishments and fines for the perpetrator of violence against the aggrieved person (Aurat Foundation, 2013). The law gave the right to the aggrieved person to stay in the same house and put restrictions on the perpetrator to commit violence against her while she is in the house. It also prohibits the perpetrator from coming near the aggrieved women, entering her place of employment or communicating with her electronically or by print (Aurat Foundation, 2013). The Act also required the formulation of a Protection Committee, consisting of a social welfare officer, medical practitioner, psychologist, a psycho-social worker, an official appointed by the court, a female police officer, two representatives of civil society and the protection officer. The Committee would inform the aggrieved women about her rights, arrange for her stay and to help her to file the case under the Act (Aurat Foundation, 2013).

In 2014 the Balochistan Provincial Assembly enacted, The Balochistan Domestic Violence (Prevention and Protection) Act. This Act has similar provisions to the Sindh's Act for the definition of an aggrieved person, filing cases in courts, right of the aggrieved person to stay in the accused house, the accused not to come near her to harass or abuse her and not to enter her place of employment. The Act also adds that the accused has to pay monetary relief to the aggrieved woman for her expenses and losses she has suffered (Balochistan Government, 2014). The Act indicates that a Protection Committee comprising of a Tehsildar, a head mistress, and two

women from relevant tehsils (a sub-division of a district) and a protection officer shall be established. The Committee serves to inform the women of her rights, arrange a safe place to stay, arrange medical treatment, if needed, and assist her to file a court case under this act (Balochistan Government, 2014).

In 2016, the Provincial Assembly of Punjab enacted The Punjab Protection of Women against Violence Act, which was designed to punish abusive partners and establish new protection centers and shelter homes for women fleeing abuse can take refuge (Punjab Government, 2016). This law defined aggrieved person as a female only and differed from previous laws in that it did not include children or other vulnerable persons. The Act stated that the government shall provide a national toll free crisis line so the aggrieved women can receive immediate help. It also added the provision for the government to establish shelter homes and protection centers, the mandate of which is to arrange for rescue, medical treatment, psychological support and legal assistance of the aggrieved women and to assist in mediation and reconciliation between the two parties. The Act also indicates that the aggrieved woman shall not be evicted from her house and she can choose to continue to stay there or at a shelter home (Punjab Government, 2016). In addition, the accused shall not come near the aggrieved woman and is monitored through a wrist bracelet GPS tracker to enforce the protection order. The perpetrator also has to surrender any weapons and is restricted from communicating with the woman electronically or by print or entering her place of employment. The court can also ask the accused to pay monetary relief to the aggrieved woman for her expenses and any losses she has suffered (Punjab Government, 2016). Also, a District Women Protection Committee shall be established, comprised of executive district officers (health and community development), a representative of district police, district social welfare officer, district public prosecutor, district women protection officer and four members from civil society and philanthropists (Punjab Government, 2016). The responsibilities of this committee would be to supervise the protection centers, shelter homes and the toll free crisis lines, provide mediation and reconciliation between parties, ensure that VAW cases registered in police stations are referred to protection centers for medical examination and collection of forensic and

investigation, and providing transportation for consenting aggrieved women to protection centers (Punjab Government, 2016).

At the time of writing this section, the Punjab Government was in the process of establishing new shelter home in the Multan district and recently established a provincial Women Protection Authority, whose role is to monitor and regulate the protection centers and shelter homes of all district in the Punjab province (Hassan & Farooq, 2016).

The KP province of Pakistan has tabled the laws on the issue of VAW, by the time of writing this paper (Shah, 2016). However, KP is tribal and traditional province and thus it is difficult for the provincial government to lobby for pro-women legislation in assemblies in these circumstances (Shah, 2016).

Legislation to Restraint Child Marriages in Pakistan

Pakistan adopted many laws from the British rule in Indian sub-continent before its Independence in 1947. For example, The Child Marriage Restraint Act of 1929 was enacted by British Government in Indian sub-continent to prevent and discourage the child marriages (Punjab Government, 2015). It defined marriageable age for boys as 18 years and 16 for girls. The Act determined the punishment for perpetrators, defined as the adult marrying a child, the individual solemnizing a child marriage, and parent or guardian of child being married, as one month imprisonment and a fine of 1,000 rupees (US\$ 10) (Punjab Government, 2015). Any person can report the marriage to the Union Council or a competent local authority, who then, refer the case to family court, within one year of solemnizing the child marriage, that can issue an order to prohibit an impending child marriage. This law does not allow for the dissolution of a proven child marriage (Punjab Government, 2015). The law applied to all provinces of Pakistan, till the Sindh Provincial Assembly of Pakistan enacted its own law, The Sindh Child Marriages Restraint Act in 2013.

The Sindh Child Marriages Restraint Act defined the marriageable age for both boys and girls as 18 years. The perpetrators were the same the National law identified above, however the punishment was more severe, two or three year imprisonment of jails and fines. (Sindh Government, 2013). Unlike to the British Law of 1929, the Sindh Act identified that the matter

could be reported to the police and then to Magistrate of the court. The offence would be cognizable, non-bail-able and non-compoundable. The law does allow the courts to prohibit impending child marriages, or allow for automatic dissolution of a proven child marriage (Sindh Government, 2013).

The Punjab Provincial Assembly was the second to enact, The Child Marriage Restraint (Amendment) Act 2015, amendments in the British Law of 1929. It defined marriageable age as 18 years for boys and 16 years for girls, perpetrators were the same as those identified in the Sindh Act and the punishment was six months imprisonment and 50,000 rupees (US\$ 500) fine (Punjab Government, 2015). The law states that the offence would be non-cognizable and the case should be reported to the Union Council or any competent local authority, not the police that can move the case to family courts. Similar to the Sindh's Act, courts in the Punjab's Act cannot prohibit an impending child marriage or allow for automatic dissolution of a proven child marriage (Punjab Government, 2015).

The Child Marriage Restraint Act of 1929 is still applicable in KP and Balochistan (The Institute for Social Justice, 2016), although these governments are currently drafting their own provincial laws for restraining child marriages (Shah, 2016). As these provinces are conventional and tribal, enacting these types of laws may prove difficult.

The women's rights movement has a long and complex history in Pakistan. Beginning with laws enacted during British rule and through concerted work of women's rights advocates and pro-women governments and legislators, many women's organizations have been established and some legislation has been advanced to enhance women's economic, political and social well-being. Although, there some legislation has been enacted in the VAW, the conventional mindset of Pakistani's highly patriarchal society makes it difficult to implement laws to reduce women's exposure to violence.

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